

Issue 1 - The Acceptable Use Determination (AUD) process assesses whether the end-product of a sediment treatment process is environmentally safe to use within the State for purposes such as fill or landscaping material. Because the stabilized RM 10.9 sediment will be disposed of in an out of state RCRA Subtitle C Landfill and not reused, on what basis and for what purpose would NJDEP require a AUD for sediment from RM 10.9?

It is not an out of state issue. Requirements are for the processing facility to state that the processing facility is able to accept this material (dioxin laden sediment and supernatant water) for processing. Clean Earth should have this information.

CPG has selected Clean Earth to provide stabilization services at their Kearny facility, and has selected the Clean Harbors Subtitle C landfill in Oklahoma (the Lone Mountain - Waynoka facility) for final disposal of the RM 10.9 stabilized sediment (this is the same facility that accepted de-watered sediment from Tierra's Phase 1 Removal Action). The concern highlighted by EPA's question is whether there is any statutory or regulatory basis to issue an "Acceptable Use Determination" (AUD) for processed sediment when the ultimate disposition (i.e. "use") is landfilling in an EPA-approved out-of-state landfill.

DEP Response – Based on my telephone conversation with Stan Karzmarek of demaximis, inc, on 3-21-13, confirmation will be provided to the Department verifying that the processing facility is able to receive this material for processing. Stan stated that he would also confirm our conversation with the Department by email.

Issue 2 - NJDEP has indicated it will not grant an AUD to the commercial stabilization facilities for treating the RM 10.9 sediment unless NJDEP also approves the out-of-state landfill and wastewater treatment facilities where RM 10.9 material will be sent. In the context of an EPA-lead Superfund response action, it is EPA that determines the acceptability of the off-site disposal location and this NJDEP position is questionable.

All the NJDEP needs from the EPA or landfill is that the receiving authority, Landfill, is willing to accept this material. No permits or approval is required. As stated above, CPG has selected Clean Earth to provide stabilization services and Clean Harbors (CH) to provide Transportation and Disposal services for the stabilized RM 10.9 sediment. CPG has also contracted CH to transport and treat the water that will be removed from the dredged sediment. The selected out-of-state disposal facilities will be discussed with

EPA and TCLP data will be provided to the landfill facility.

DEP Response – Based on my telephone conversation with Stan Karzmarek of demaximis, inc, on 3-21-2013, confirmation will be provided to the Department verifying that the receiving facility, Landfill, is willing to receive this material. Stan stated that he would also confirm our conversation with the Department by email.

Issue 3 – The CPG provided Potential to Emit (PTE) analyses for the dredging operation to NJDEP in early January 2013. The chemical analysis of the sediment indicated that the dredging operation would not trigger any air emission regulations. Note that if NJDEP seeks to require controls or monitoring, it must make a final decision and provide its rationale as soon as possible so this issue can be resolved.

Air Permit (for dredging operation). This is handled in Ed Chormanski's group. Basically, to my understanding, an air permit is not needed for the dredging operations occurring directly in the river. I have no information regarding the status of this permit. I requested that a formal reply letter be sent to CPG and copy me. Please note that air monitoring will be incorporated as part of the Community Health and Safety Plan and handled through site remediation for the community surrounding the RM 10.9 dredging remediation. This is required to address potential community concerns.

We look forward to getting written confirmation that no air permit for dredging will be required. Additionally the air monitoring to be conducted as part of the CHASP is a design issue and we look forward to comments on this activity through the EPA design review process.

DEP Response – Acceptable.

Issue 4 - The CPG provided data to support its position that detailed flood hazard modeling is not warranted for a "no net fill" project at RM 10.9. If NJDEP continues to request a flooding assessment/model to support that flood hazard is not applicable, NJDEP must provide its rationale as soon as possible.

Here are some comments for the permit equivalency. Official comments will be forthcoming in an official reply from the Department. There may be additional comments -

- An engineer with a valid NJ license must sign and seal all plans.
 - Once the Final Design is approved, it will be signed and sealed by an NJ PE. DEP Response – required by NJAC 7:13-9.2(b)7

-
- The submitted compliance statement is silent with respect to subchapter 10 of N.J.A.C. 7:13. Please revise accordingly, including all written justification and plan details to demonstrate compliance with the rules. (*Appears 10.1 not addressed – work in channels, and that needs to be addressed.*)
 - None of the RM 10.9 Removal Action will occur in the authorized shipping channel, therefore that section appears to be Not Applicable to CPG’s WFD permit application. In addition, the RM 10.9 Removal Action does not appear to meet the definition of a “regulated activity” under this section because CPG’s action will not alter the final topography and will be not constructing any buildings or bridges or pilings in the removal area. DEP Response – Subchapter 10 covers different regulated areas, and each subsection applies if you are doing work in that regulated area. So, 10.1 is channels, 10.2 is riparian zones, 10.3 is floodway, 10.4 is floodfringe, etc. They simply are required to address the standards for each area they are proposing to work in. *This was discussed on the phone.
- The plans contain a note stating, “There are no plans for staging equipment, supplies, materials, or development associated with removal action landward of the mean high water line.” Please clarify if this means that plans are lacking or that no work/staging/disturbance is proposed anywhere above the mean high water line Should any work/staging/disturbance be planned, please include in the compliance statement how all such work complies with all applicable standards of the Flood Hazard Area Control Act rules.
 - All staging of capping materials and loading of material barges will occur at supplier's own existing industrial facilities. No new staging facilities are being created for this project, thus no changes that would require application of any new Flood Hazard Control studies. DEP response – is that staging and storage of things in regulated areas is regulated and needs to be addressed as such. If it’s in the floodplain it needs to meet those standards. If it’s in the channel it needs to meet those standards,

and so forth. The note is unclear. Does it mean there is no staging, or no plan sheets were made for it but staging is proposed, or is the staging and storage just proposed below the MHW?

- Please quantify the peak flow rates in all storms up to and including the flood hazard event in both the existing and proposed conditions in the areas where work is proposed. These calculations must take into consideration the change in the Manning's n values. Please label specifically on the plans where material with a Manning's n value of 0.022 will be utilized versus material with a Manning's n value of 0.029. In addition, please provide justification that the current n value is 0.022 and that proposed n values will be 0.029 and/or 0.032. If existing vs. proposed flow rates differ significantly, please provide calculations showing that the proposed project will not result in increases in water surface elevation in any storm event up to and including the flood hazard event. Otherwise, please rethink the dimensions of the proposed river bottom/bank as well as the materials to be used in those areas.

The design as reflected in the draft Final Design Report was updated to include addition of sand/soil on top of the armoring layer such that the Manning n values for this new top layer material will be in the same range of friction coefficient values, as existing sediment. In addition, there will be no net increase in elevation (no net fill). Therefore there will be no change from current flood hazard potential. DEP Response – This last item is required under 11.1. making the channel smoother or rougher (which is modeled with the mannings n number), can affect the elevation of the water surface and the flowrate of water through the channel. Therefore, it could flood someone if the channel is changed significantly. CPG needs to document that there will be no effect.

Issue 5 - NJDEP has indicated the CPG's Water Front Development (WFD) permit application will not be approved unless the AUD application is approved. Putting aside the AUD question noted above, it is not clear under what authority these two permits are linked. The CPG will need to inform the Tidelands Commission before April 15 to appear on the May 1 meeting agenda. Failure of NJDEP to enable the CPG to go forward by that date will delay the removal.

Processing facility identified and disposal location needs to be provided, then waterfront development permit can be issued with appropriate conditions.

As mentioned above, the CPG has selected Clean Earth to stabilize RM 10.9

sediment and dispose of the material in the Clean Harbors RCRA landfill located in Oklahoma. It is now assumed that this identification will allow the WFD Permit Equivalents to be issued in accordance with the required project schedule.

DEP Response- Issue 5 associated with compliance of Issues 1 and 2 above.

Issue 6 - The water quality monitoring program proposed by NJDEP during the dredging operation imposes a difficult obligation on the CPG because the Passaic River does not currently meet surface water quality standards. Furthermore, NJDEP's proposed schedule would delay approval until the after approval of the Final Design Report, resulting in an unacceptable delay in the WFD process.

SRP will find out status of CPG's position and whether or not they are currently willing to perform H2O quality monitoring? DEP has issued comment to the CPG on the H2O quality monitoring plan and will follow up on status of CPG compliance. The final design report needs to go through the process for final approval of the WFD. The DEP can't issue a WFD permit with a final plan until a final plan report is complete. SRP will work with CPG to get timing on finalizing the design report.

CPG's position is that water quality monitoring during dredging is a design issue to be addressed through comments to EPA on the draft Final Design Report, rather than being a WFD issue.

DEP Response - Acceptable

Issue 7 - NJDEP has requested elutriate testing/characterization of dredge sediment that is normally required for direct discharge of excess barge water to surface water. The CPG has indicated that excess barge water will be collected, containerized, tested and then disposed of at an off-site facility that has permits to treat such water; therefore, this requirement is does not appear to be relevant to the situation.

Clean Earth needs to address this issue via way AUD process. CPG gave Clean Earth water quality data that was surface water and not data derived from sediment water. DEP is just stating that sediment water analysis needs to be performed to get a better representation of sediment water quality which is what will be handled during remedial activities. Department's concern is with potential problems that may arise from misrepresentation of sediment water quality. SRP will follow up with CPG in an effort to get clarification as to whether or not this has been discussed with Clean Earth.

CPG has selected Clean Harbors (CH) to provide Transportation and Disposal services including the management of excess barge water. It is anticipated that this water stream will be transported to a CH facility in either Connecticut or Maryland and that the decision as to which facility will handle this water will be based in part on analysis, in part on CH experience with handling similar water from the Tierra Phase 1 Removal Action, and on EPA approval. The issue of whether CH can manage this water is an issue that CH will address with CPG, with EPA and with CT or MD permitting authorities. It is our position that the decision on what type of data is needed to support that decision is to be determined by CH working with the CT or MD agencies. EPA will ultimately approve of the selected CH facility.

DEP Response – Required through the Coastal Zone Management Rules, NJAC 7:7E-ETSEQ, in subchapters 7:7E-7.12 Dredge material Disposal on Land, 7:7E-8.4 Water Quality